

REPRESENTATIVE FOR PETITIONER: Pro Se

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|---------------------------|---|---------------------------------------|
| Eric Morris, |) | |
| |) | Petition Nos.: 29-018-16-1-5-00413-19 |
| Petitioner, |) | 29-018-17-1-5-00412-19 |
| |) | 29-018-18-1-5-00414-19 |
| v. |) | |
| |) | Parcel No.: 29-13-01-319-010.000-018 |
| Hamilton County Assessor, |) | |
| |) | Assessment Years: 2016 – 2018 |
| Respondent. |) | |
| |) | |

November 19, 2020

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

I. Introduction

1. Petitioner, Eric Morris, makes various claims relating to Clay Township’s fire protection fund (Fire Fund 1111). He filed his petitions under the Uniform Declaratory Judgment Act, and he expressly disclaims seeking a change to his assessment or even to his tax rate or taxes for any of the years in question. Indeed, he seeks no specific individual relief at all. We cannot decide claims under the Uniform Declaratory Judgment Act, which creates a cause of action in courts—not in administrative agencies. And we do not issue advisory opinions. We therefore dismiss Morris’s petitions.

II. Procedural History

2. In 2018, Morris brought a small-claims action in Hamilton Superior Court. Although Morris did not include a copy of his complaint, he apparently alleged that Clay Township violated an interlocal agreement and annual fire contracts with the City of Carmel when it imposed taxes on the unincorporated areas outside the city to pay for building fire stations and a command center. The Court granted the township's motion to dismiss for lack of subject matter jurisdiction. Morris asked the Court to reconsider and attempted to file an amended complaint. Morris represented that the dispute was not over taxation, as he incorrectly wrote in his original complaint. Rather, he claimed that he was seeking "non-dollar" relief under the Uniform Declaratory Judgment Act over incorrect accounting of revenues, and that the Court did not need to apply tax law to resolve his claims. The Court denied Morris's attempt to reopen the case. *See Pet'r Exs. 87-93.*
3. Morris did not appeal the Court's judgment. Instead, in February 2019, he filed three Forms 130 petitions (one for each assessment year from 2016-2018) with the Hamilton County Property Tax Assessment Board of Appeals ("PTABOA"). The portions of the Form 130 petitions Morris provided to us contain a check mark by the box indicating a challenge to the "legality or constitutionality of a property tax or assessment." In the portion of the form set aside for describing the basis of his claim, Morris wrote that he was seeking relief under the Uniform Declaratory Judgment Act. The PTABOA denied each petition, explaining that it lacked authority to resolve Morris's claims. *Form 131 petitions, at attachments.*
4. Morris responded by filing Form 131 petitions with us. In each petition, Morris stated that he was "not appealing assessed value," but rather was seeking relief "under the Indiana Uniform Declaratory Judgment[] Act . . . that Clay Township has incorrectly and illegally made appropriations and failed to account for revenues correctly in Fire Fund 1111 for residents of the unincorporated portion of Clay Township pursuant to Interlocal Agreements between the City of Carmel and itself." *Form 131 petitions.*

5. On June 17, 2020, Commissioner Jonathan Elrod was designated as the ALJ and held a telephonic hearing on the petitions. Neither he nor the Board inspected Morris's property.
6. Morris appeared *pro se* and was sworn as a witness. Marilyn Meighen appeared as counsel for the Assessor.
7. Morris offered the following exhibits:

- | | |
|------------------------|--|
| Petitioner Exhibit 1: | 2011 Fund Disbursements, from Gateway DLGF website |
| Petitioner Exhibit 2: | 2012 Fund Disbursements, from Gateway DLGF website |
| Petitioner Exhibit 3: | 2012 Fire Fund 1111 Budget, from Gateway DLGF website |
| Petitioner Exhibit 4: | 2013 Fire Fund 1111 Budget, from Gateway DLGF website |
| Petitioner Exhibit 5: | 2014 Fire Fund 1111 Budget, from Gateway DLGF website |
| Petitioner Exhibit 6: | 2015 Fire Fund 1111 Budget, from Gateway DLGF website |
| Petitioner Exhibit 7: | 2016 Fire Fund 1111 Budget, from Gateway DLGF website |
| Petitioner Exhibit 8: | 2016 Fire Building Debt 1181 Budget, from Gateway DLGF website |
| Petitioner Exhibit 9: | 2017 Fire Building Debt 1181 Budget, from Gateway DLGF website |
| Petitioner Exhibit 10: | 2013 Fund Disbursements, from Gateway DLGF website |
| Petitioner Exhibit 11: | 2014 Fund Disbursements, from Gateway DLGF website |
| Petitioner Exhibit 12: | 2017 Fire Fund 1111 Budget, from Gateway DLGF website |
| Petitioner Exhibit 13: | 2019 Fire Building Debt 1181 Budget, from Gateway DLGF website |
| Petitioner Exhibit 14: | 2018 Fire Fund 1111 Budget, from Gateway DLGF website |
| Petitioner Exhibit 15: | 2019 Fire Building Debt 1181 Budget, from Gateway DLGF website |
| Petitioner Exhibit 16: | 2019 Fire Fund 1111 Budget, from Gateway DLGF website |
| Petitioner Exhibit 17: | 2020 Fire Building Debt 1181 Budget, from Gateway DLGF website |
| Petitioner Exhibit 18: | 2015 Fund Disbursements, from Gateway DLGF website |
| Petitioner Exhibit 19: | 2016 Fund Disbursements, from Gateway DLGF website |
| Petitioner Exhibit 20: | 2017 Fund Disbursements, from Gateway DLGF website |
| Petitioner Exhibit 21: | 2018 Fund Disbursements, from Gateway DLGF website |
| Petitioner Exhibit 22: | 2019 Fund Disbursements, from Gateway DLGF website |
| Petitioner Exhibit 23: | August 2017 Joinder Refund, from Carmel LaserFische system |
| Petitioner Exhibit 24: | December 2013 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system |
| Petitioner Exhibit 25: | February 2011 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system |

- Petitioner Exhibit 26: February 2012 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 27: February 2013 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 28: February 2014 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 29: February 2015 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 30: February 2017 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 31: February 2018 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 32: February 2019 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 33: February 2020 fire truck sale reimbursement to Clay Township from City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 34: Firefighter Physicals Expenses 2018 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 35: Station 45 and 46 Expenses 2018 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 36: Station 45 Expenses 2018 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 37: January 2013 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 38: January 2020 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 39: Station 45 Expenses 2013 direct Invoice to City of Carmel from Carmel LaserFische system
- Petitioner Exhibit 40: March 2016 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 41: Station 45 Expenses 2014 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 42: Station 41 and 45 Expenses 2008 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 43: Station 45 and 46 Expenses 2015 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 44: Station 45 and 46 Expenses 2017 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 45: Station 45 Expenses 2016 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 46: Station 41 and 45 Expenses 2014 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 47: September 2011 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system

- Petitioner Exhibit 48: September 2014 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 49: September 2015 Clay Township Invoice to City of Carmel for Station #45 expenses, from Carmel LaserFische system
- Petitioner Exhibit 50: Station 45 Expenses 2015 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 51: Station 45 Expenses 2018 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 52: Station 45 Expenses 2014 direct Invoice to City of Carmel, from Carmel LaserFische system
- Petitioner Exhibit 53: 2012 Carmel-Clay Fire Contract, from Carmel LaserFische
- Petitioner Exhibit 54: 2013 Carmel-Clay Fire Contract, from Carmel LaserFische
- Petitioner Exhibit 55: 2014 Carmel-Clay Fire Contract, from Carmel LaserFische
- Petitioner Exhibit 56: 2015 Carmel-Clay Fire Contract, from Carmel LaserFische
- Petitioner Exhibit 57: 2016 Carmel-Clay Fire Contract, from Carmel LaserFische
- Petitioner Exhibit 58: 2017 Carmel-Clay Fire Contract, from Carmel LaserFische
- Petitioner Exhibit 59: 2018 Carmel-Clay Fire Contract, from Carmel LaserFische
- Petitioner Exhibit 60: D-2176-14 Interlocal Agreement for Fire Facilities Financing, Construction and Maintenance Stations #43 and #44 Training Center
- Petitioner Exhibit 61: City of Carmel-St. Vincent Firefighter Physicals Contract 2019, from Carmel LaserFische
- Petitioner Exhibit 62: Lease-Sublease Stations 43 and 44, June 2015
- Petitioner Exhibit 63: Station 44 Construction 2017 expenses paid from Fire Fund 1111, from Clay Township
- Petitioner Exhibit 64: Station 44 Construction 2018 expenses paid from Fire Fund 1111, from Clay Township
- Petitioner Exhibit 65: “Rebirth of Station 44” Video 2016 expenses paid from Fire Fund 1111, from Clay Township
- Petitioner Exhibit 66: Station 45 Construction 2015 expenses paid from Fire Fund 1111, from Clay Township
- Petitioner Exhibit 67: Station 45 Construction 2016 expenses paid from Fire Fund 1111, from Clay Township
- Petitioner Exhibit 68: Station 42 and 46 Construction 2016 expenses paid from Fire Fund 1111, from Clay Township
- Petitioner Exhibit 69: Firefighter for a Day sponsorship 2016 paid from Fire Fund 1111, from Clay Township
- Petitioner Exhibit 70: Station 44 Construction 2017 expenses paid from Fire Fund 1111, from Clay Township
- Petitioner Exhibit 71: Station 45 Construction 2018 expenses paid from Fire Fund 1111, from Clay Township
- Petitioner Exhibit 72: 2019 Carmel Fire District map, from Carmel website
- Petitioner Exhibit 73: Current in Carmel article
- Petitioner Exhibit 74: Current in Carmel article

Petitioner Exhibit 75: Current in Carmel article
 Petitioner Exhibit 76: Current in Carmel article
 Petitioner Exhibit 77: Current in Carmel article
 Petitioner Exhibit 78: Current in Carmel article
 Petitioner Exhibit 79: Current in Carmel article
 Petitioner Exhibit 80: Current in Carmel article
 Petitioner Exhibit 81: Current in Carmel article
 Petitioner Exhibit 82: Current in Carmel article
 Petitioner Exhibit 83: Current in Carmel article
 Petitioner Exhibit 84: Clay Township Finances 2019
 Petitioner Exhibit 86:¹ Township response letter 5-10-18
 Petitioner Exhibit 87: Documents from Eric S. Morris v. Clay Township Small Claims case
 Petitioner Exhibit 88: Documents from Eric S. Morris v. Clay Township Small Claims case
 Petitioner Exhibit 89: Documents from Eric S. Morris v. Clay Township Small Claims case
 Petitioner Exhibit 90: Documents from Eric S. Morris v. Clay Township Small Claims case
 Petitioner Exhibit 91: Documents from Eric S. Morris v. Clay Township Small Claims case
 Petitioner Exhibit 92: Documents from Eric S. Morris v. Clay Township Small Claims case
 Petitioner Exhibit 93: Documents from Eric S. Morris v. Clay Township Small Claims case
 Petitioner Exhibit 94: Clay Township Fire Protection Contract 2019, from Carmel Laserfische
 Petitioner Exhibit 95: Excel spreadsheet analysis of Fire Fund 1111
 Petitioner Exhibit 96: Gateway Certified Budget download 1984-2020
 Petitioner Exhibit 97: Email exchange between Doug Callahan and Eric Morris, May 2018
 Petitioner Exhibit 98: Clay Township Fire Protection Contract 2011, from Carmel Laserfische

8. The Assessor submitted the following exhibits:

Respondent Exhibit A: DLGF Order of Budget and Tax Rates 2015/pay 2016 (pertinent part)
 Respondent Exhibit B: DLGF Order of Budget and Tax Rates 2016/pay 2017 (pertinent part)
 Respondent Exhibit C: DLGF Order of Budget and Tax Rates 2017/pay 2018 (pertinent part)

¹ Morris did not offer an Exhibit 85.

Respondent Exhibit D: DLGF Order of Budget and Tax Rates 2018/pay 2019
(pertinent part)

9. The record also includes (1) all petitions, briefs, motions, and other documents filed in these appeals, (2) all orders and notices issued by the Board, and (3) an audio recording of the hearing.

III. Objections

10. The Assessor objected to Petitioner's Exhibits 1-6, 10-11, 24-29, 33, 37, 39, 41-43, 46-50, 52-56, 62, 66, and 98—documents concerning Fire Fund 1111 and related matters for years before 2016—on relevance grounds because they predated the years under appeal. He also objected to Exhibits 73-83 (newspaper articles) on hearsay grounds. We overrule both objections.
11. Morris responded to the Assessor's relevance objections by arguing that the Uniform Declaratory Judgment Act has a ten-year statute of limitations, and that all the contested documents were from the past ten years. As explained below, we lack authority to address causes of action under the Uniform Declaratory Judgment Act, so its limitations period is beside the point. Nonetheless, the documents are at least marginally relevant to the subject matter raised in Morris's petitions, even if we ultimately do not address the merits of those petitions. We therefore overrule the objections.
12. Turning to the Assessor's hearsay objections, Morris correctly observed that our procedural rules allow us to admit hearsay, with the caveat that if the opposing party objects and the evidence does not fit within a recognized exception to the hearsay rule, we cannot base our determination solely on that hearsay. Even though we overrule the Assessor's hearsay objections, we do not rely on the contested exhibits in reaching our determination.²

² On the day of the hearing, Morris e-mailed the Board a revised version Exhibit 95, which the Assessor did not receive and to which he objected. The ALJ sustained the objection.

IV. Summary of Parties' Contentions

A. Morris's Contentions

13. Morris brought his petitions under the Uniform Declaratory Judgment Act. At the hearing, Morris elaborated on why he believed that money had been improperly appropriated to Fire Fund 1111 and spent for purposes not permitted by our state constitution, relevant statutes, or contractual agreements between Clay Township and the City of Carmel. But Morris acknowledges that he is not contesting his assessment. Nor does he seek a tax refund or a change in his tax rate for any of the years in question, although he argues that his claims “do implicate the tax rates eventually.” *Form 131 petitions; Morris testimony; Post Hearing Brief of Petitioner at 2.*

B. The Assessor's Contentions

14. The Assessor contends that we lack jurisdiction to hear Morris's appeals. He points to Ind. Code § 6-1.5-4-1, which he argues gives us jurisdiction over appeals from an assessment official only when those appeals concern assessed valuations, exemptions, deductions, or credits. Morris admits that his appeals do not relate to any of those things. *Assessor's Post-Hearing Brief at 5-6.*
15. The Assessor characterizes Morris's appeals as “offshoot[s]” of *Daw v. Hancock Cty. Ass'r*, 116 N.E.3d 1 (Ind. Tax Ct. 2018) *reh'g granted, in part*, 120 N.E.3d 1158 (Ind. Tax Ct. 2019). In that case, taxpayers contested, among other things, stormwater charges and penalties on grounds that the ordinance annexing their farmland was invalid. In its original opinion, the Tax Court found that it had jurisdiction to address the contested charges because they were taxes rather than user fees. Although the Tax Court recognized that the Board lacked authority to resolve the claims, it remanded the case for the Board to hold a hearing and make factual findings. The legislature responded to *Daw* by retroactively amending Ind. Code § 6-1.1-15-1.1 to clarify that a taxpayer cannot, in a property tax appeal, raise a claim related to: “(1) a user fee (as defined in IC 33-23-1-

10.5); (2) *any other charge, fee, or rate imposed by a political subdivision under any law;* or (3) any tax imposed by a political subdivision other than a property tax.” According to the Assessor, this retroactive amendment prohibits Morris from bringing a property tax appeal to challenge a government’s appropriations for, and accounting of, firefighting funds. *Assessor’s Post-Hearing Brief at 6-7 (citing I.C. § 6-1.1-15-2.2(h)³*(emphasis in brief).

16. For additional guidance, the Assessor points to the Tax Court’s decision in *U.S. Steel Corp. v. Lake Cty. Prop. Tax Assessment Bd. of Appeals*. There the Court noted that in a budget-driven system, tax rates are a function both of assessed value and budgets or tax levies. Simply saying an appeal implicates a tax rate therefore does not deprive the Board of jurisdiction, because every appeal contesting an assessment necessarily implicates tax rates. Instead, the Court explained that the Board must consider whether the appeal concerns assessed value or budgets and tax levies. Only if the appeal concerns assessed value does the Board have jurisdiction. *Assessor’s Post-Hearing Brief at 7-8 (citing U.S. Steel Corp. v. Lake Cty. Prop. Tax Assessment Bd. of Appeals, 785 N.E.2d 1209, 1211 (Ind. Tax Ct. 2003), rev’d in part on other grounds 820 N.E.2d 1237 (Ind. 2005))*.
17. Because Morris admittedly does not contest his assessed value, the Assessor argues that neither the Assessor nor the Board should be involved. According to the Assessor, Morris could have objected Clay Township’s budget or tax levies through the statutory process by first bringing his claims to the Hamilton County Auditor, then to the Department of Local Government Finance (“DLGF”), and ultimately to the Tax Court on judicial review. But he failed to take advantage of those opportunities. *Assessor’s Post-Hearing Brief at 7-8 (citing Ind. Code § 6-1.1-17-16(j) (2018) and Perry v. Ind. Dep’t of Local Gov’t Fin., 892 N.E.2d 1281 (Ind. Tax Ct. 2008))*.

³ The amendment adding subsection (h) was retroactively effective on July 1, 2017. 2019 Ind. Acts 195 § 1.

18. Finally, the Assessor points out that Morris represented to the Hamilton Superior Court that it would not need to apply substantive tax law to resolve his claims. *Assessor's Post-Hearing Brief at 9; Pet'r Ex. 89 at ¶¶ 1-2.*

V. Analysis

19. The Assessor has raised a threshold issue: Do we have authority to address Morris's claims? We find that we do not.

20. Our enabling statute generally lays out the appeals we may hear. In relevant part, the statute provides:

(a) The Indiana Board shall conduct an impartial review of all appeals concerning:

- (1) the assessed valuation of tangible property;
- (2) property tax deductions;
- (3) property tax exemptions; or
- (4) property tax credits;

that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.

I.C. § 6-1.5-4-1(a).

21. The Assessor argues that because Morris's claims do not involve any of those enumerated subjects, we lack jurisdiction to hear his appeals. Even if, as Morris asserts, his appeals tangentially implicate a tax rate, the Assessor argues that *U.S Steel* and the retroactive amendment to Ind. Code § 6-1.1-15-1.1 prohibit such claims in an appeal to the Board. Instead, the Assessor argues that Morris's remedy was to challenge the budget or tax levy with the Hamilton County Auditor and the DLGF before proceeding to the Tax Court. But the statute the Assessor points to as providing that pathway—Ind. Code § 6-1.1-17-16(j) (2018)—did not give a taxpayer in Morris's position the right to appeal a budget, tax rate, or tax levy. Instead, it allowed a single taxpayer to appeal the DLGF's certification of a tax rate or levy if (1) that taxpayer owned property representing at least 10% of the taxable assessed valuation in the political subdivision; or (2) the certification

addressed an appeal of a county board of tax adjustment's or county auditor's revision of a tax rate, tax levy, or budget, and the taxpayer either owned property representing at least 10% of the taxable assessed valuation in the political subdivision or was part of a group of at least 10 taxpayers who appealed the revision. I.C. § 6-1.1-17-16(j); I.C. § 6-1.1-17-13.

22. We need not decide the thorny questions surrounding what, if any, path was available for an individual taxpayer, such as Morris, to challenge a budget, levy, or tax rate. Morris steadfastly asserts that he brings his claims under the Uniform Declaratory Judgment Act. By its express terms, that Act creates a cause of action in court—not before an administrative agency, such as the Board. I.C. § 34-14-1-1. (“*Courts of record* within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”) (emphasis added). For that reason, we lack authority to address Morris’s claims.
23. Even if Morris could seek a declaratory judgment before us, he has not asked for any specific individual relief, even in the form of a declaration. He acknowledges that he is not contesting his property’s assessment, and he does not seek a tax refund or a change in his tax rate for any of the years in question. *See Post Hearing Brief of Petitioner* at 2; *see also, Form 131 petitions; Form 130 petitions; Morris testimony*. He characterizes the “jurisdictional and procedural issues” as not “clear cut,” but he argues that we have the authority to make factual determinations on whether local officials were following the constitution, statutes, fire contracts, and an interlocal agreement in appropriating, accounting for, and spending money. *Post Hearing Brief of Petitioner* at 16. He is wrong. We do not issue advisory opinions.

V. Conclusion

We lack authority to address Morris’s claims. We therefore dismiss his appeal petitions.

We issue this Final Determination on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.